

## Message Text

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ORIGIN EB-07

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C O N F I D E N T I A L STATE 138640

FOR O'MELIA (CIVAIR DEL)

E.O. 11652: GDS

TAGS: EAIR, UK

SUBJECT: US-UK CIVAIR NEGOTIATIONS - CESSATION OF SERVICES

REF: (A) O'MELIA/RODRIGUEZ TELECON, 6/14/77;  
(B) STATE 137688

1. FOLLOWING ARE KEY PORTIONS OF DRAFT OPINION IN BRITISH CARRIER 402 PROCEEDINGS (DOCKET 29747) BEING CIRCULATED TODAY TO BOARD MEMBERS FOR NOTATION APPROVAL. REQUEST YOU AND MEMBER WEST REVIEW AND ADVISE CAB BY PHONE YOUR VOTE. IF APPROVED, PLAN TRANSMIT OPINION, ATTACHING ORDER AND PERMIT PROPOSED FOR BRITISH AIRWAYS AND BRITISH CALEDONIAN, FOR PRESIDENTIAL REVIEW ON JUNE 16.

2. INTRODUCTORY PARAGRAPHS DESCRIBE INSTITUTION OF PRO-CONFIDENTIAL

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CEEDING, AND SUMMARIZE ALJ'S RECOMMENDED DECISION AND PETITIONS FOR REVIEW FILED BY INTERESTED PARTIES.

3. "UPON CONSIDERATION OF THE RECOMMENDED DECISION AND THE CONTENTIONS OF THE PARTIES, THE BOARD HAS CONCLUDED THAT THE DISPOSITION OF THIS PROCEEDING WITH RESPECT TO BRITISH AIRWAYS, THE UK NATIONAL TRANSATLANTIC SCHEDULED CARRIER, SHOULD BE DIFFERENT FROM THAT RECOMMENDED BY THE LAW JUDGE, ALTHOUGH CONSISTENT WITH THE SUBSTANTIVE NATURE OF HIS

RECOMMENDATIONS. WE ALSO PROPOSE A DIFFERENT DISPOSITION FOR BRITISH CALEDONIAN AIRWAYS LIMITED, CURRENTLY CONDUCTING ONLY CHARTER OPERATIONS. WITH RESPECT TO THE FOREIGN AIR CARRIER PERMIT RIGHTS OF THE BRITISH CARIBBEAN CARRIERS (AIR BVI LIMITED, CAYMAN AIRWAYS LIMITED, AND LIAT (1974) LIMITED), AND THE HONG KONG-GUAM CARRIER, CATHAY PACIFIC AIRWAYS LIMITED, WE WILL DEFER ACTION IN THIS PROCEEDING. AS AIR BVI EMPHASIZES, IT IS NOT AT ALL CLEAR THAT THE POSSIBLE LIMITATION OF US CARRIER SCHEDULED SERVICE OPERATIONS BY THE BRITISH WOULD BE EXTENDED TO THE CARIBBEAN, AND, AT LEAST FOR THE PRESENT, WE BELIEVE IT MAY BE APPROPRIATE TO AWAIT FURTHER DEVELOPMENTS WITH RESPECT TO THE PACIFIC AREA IN LIGHT OF THE VERY LIMITED AUTHORITY HELD BY CATHAY PACIFIC AIRWAYS LIMITED.

"WITH RESPECT TO BRITISH AIRWAYS, WE HAVE CONCLUDED THAT IT WILL NOT BE IN THE PUBLIC INTEREST TO RENEW OR PERMIT CONTINUATION OF THE PRESENT LONG-TERM AUTHORITY HELD BY THAT CARRIER. RATHER, THE BOARD FINDS THAT IT IS IN THE PUBLIC INTEREST TO TERMINATE SUCH AUTHORITY CONTINGENT AND EFFECTIVE UPON TERMINATION OF THE BILATERAL RIGHTS. HOWEVER, TO ACCOMMODATE SUCH RECIPROCITY AS MAY JUSTIFY CONTINUATION OF SOME OR PERHAPS ALL CURRENTLY OPERATED SERVICES, THE BOARD HAS CONCLUDED THAT IT WILL BE IN THE PUBLIC INTEREST TO ISSUE BRITISH AIRWAYS A NEW TEMPORARY AND LIMITED FOREIGN AIR CARRIER PERMIT AUTHORIZING OPERA-  
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TIONS OVER THE CURRENT ROUTE, BUT ONLY FOLLOWING PRIOR BOARD AND PRESIDENTIAL APPROVAL OF SUCH OPERATIONS IN THE FORM OF A STATEMENT OF AUTHORIZATION.

"WITH RESPECT TO BRITISH CALEDONIAN AIRWAYS LIMITED, SINCE THE CARRIER IS NOT IN ANY EVENT CURRENTLY CONDUCTING SCHEDULED TRANSATLANTIC OPERATIONS IN ACCORDANCE WITH THE SCHEDULED ROUTE AUTHORITY GRANTED BY ITS PERMIT, THE BOARD FINDS THAT THE OUTSTANDING SCHEDULED FOREIGN AIR CARRIER PERMIT AUTHORITY HELD BY THAT CARRIER SHOULD ALSO BE TERMINATED UPON TERMINATION OF THE BILATERAL AIR SERVICES AGREEMENT. HOWEVER, THE BOARD WILL ISSUE A CHARTER FOREIGN AIR CARRIER PERMIT TO BRITISH CALEDONIAN, IN THE USUAL FORM FOR BRITISH CHARTER CARRIERS, SINCE RECIPROCITY FOR CHARTER OPERATIONS IS REASONABLY ASSURED BY THE OUTSTANDING CHARTER MEMORANDUM OF UNDERSTANDING WITH THE UNITED KINGDOM WHICH REMAINS EFFECTIVE UNTIL MARCH 31, 1978.

"THE TERMINATION OF THE EXISTING AUTHORITY OF BRITISH AIRWAYS AND BRITISH CALEDONIAN AIRWAYS LIMITED WILL BE MADE EFFECTIVE AS OF THE DATE UPON WHICH BOTH THE HAPPENING OF THE CONTINGENCY SPECIFIED IN CLAUSE (3) OF THE TERMINATION PARAGRAPH OF THEIR EXISTING BILATERAL PERMITS, SUBJECT TO

THE PROVISIO THEREOF, AND UPON APPROVAL OF THE ORDER ISSUED  
HEREIN BY THE PRESIDENT HAVE OCCURRED, WHICHEVER IS LATER.

"FINALLY, BASED ON THE ASSUMPTION THAT IN LIGHT OF THIS  
OPINION, THE UNITED KINGDOM WILL NOT, EVEN WITH THE  
TERMINATION OF THE BILATERAL, IMPOSE RESTRICTIONS WHICH  
WOULD JEOPARDIZE THE RECIPROCITY WHICH WOULD SUPPORT CON-  
TINUATION OF CURRENT SERVICES, THE BOARD WILL ISSUE A  
STATEMENT OF AUTHORIZATION TO BRITISH AIRWAYS, SUBJECT TO  
APPROVAL OF THE PRESIDENT, PERMITTING OPERATION OF ANY  
SERVICES UNDER THE TEMPORARY PERMIT AUTHORITY ISSUED HERE-  
IN, WITHOUT LIMITATION, FOR A PERIOD OF 60 DAYS. THE  
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STATEMENT WILL, HOWEVER, BE SUBJECT TO MODIFICATION OR  
TERMINATION, WITHOUT HEARING, (BUT SUBJECT TO PRESIDENTIAL  
APPROVAL), IF THE PUBLIC INTEREST SHALL SO REQUIRE.

"ALTHOUGH NEGOTIATIONS ARE STILL CONTINUING, THIS BOARD  
MUST TAKE ACCOUNT OF THE POSSIBILITY THAT THE TWO GOVERN-  
MENTS WILL NOT REACH AGREEMENT BY JUNE 21, AND THAT THE  
BILATERAL AGREEMENT WILL TERMINATE AS OF THAT DATE. MORE-  
OVER, IN LIGHT OF THE PAST OCCASIONS WHERE THE UK HAS  
ATTEMPTED UNILATERAL RESTRICTIONS AGAINST US CARRIERS, AND  
THE INDICATIONS THAT THE UNITED KINGDOM GOVERNMENT MIGHT  
VERY WELL TAKE SIMILAR ACTIONS UPON THE TERMINATION OF THE  
BILATERAL OBLIGATION NOT TO DO SO, IT IS CLEAR THAT THE  
BOARD MUST TAKE ACTION NOW TO INSURE THAT THE UNITED STATES  
GOVERNMENT WILL BE IN A POSITION TO EFFECTUATE THE  
STRONGEST POSSIBLE DETERRENT TO UNILATERAL UK RESTRICTIONS,  
SHOULD THE BILATERAL IN FACT EXPIRE. WE SIMPLY CANNOT STAND  
IDLY BY AND DO NOTHING TO FORESTALL UNILATERAL UNITED  
KINGDOM RESTRICTIONS DESIGNED TO BEST SERVE THE INTERESTS  
OF THE UNITED KINGDOM CARRIERS, AT THE EXPENSE OF US  
CARRIERS."

4. HERE FOLLOWS DETAILED DISCUSSION OF PUBLIC INTEREST  
REASONS FOR NOT CONTINUING PRESENT 402 PERMITS OF BA AND  
BCAL AND RATIONALE FOR ISSUANCE OF NEW 402 PERMITS WITH  
CONDITION FOR STATEMENT OF AUTHORIZATION. BCAL (SINCE IT  
HAS NO SCHEDULED SERVICES) TO BE ISSUED A 402 PERMIT  
LIMITED TO CHARTERS, IN LIGHT OF EXISTING CHARTER MOU.

5. OPINION THEN SETS FORTH FINDINGS AS FOLLOWS:

"1. THAT IT IS NOT IN THE PUBLIC INTEREST TO RENEW THE  
FOREIGN AIR CARRIER PERMITS REISSUED, RESPECTIVELY TO  
BRITISH AIRWAYS BOARD PURSUANT TO ORDER 74-4-17, AND TO  
BRITISH CALEDONIAN AIRWAYS LIMITED PURSUANT TO ORDER  
73-3-33, UPON TERMINATION OF SAID PERMITS PURSUANT TO  
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CLAUSE (3) (TERMINATION OR EXPIRATION OF THE BILATERAL AIR SERVICES AGREEMENT) OF THE TERMINATION PARAGRAPH OF SAID PERMITS.

"2. THAT THE PUBLIC INTEREST REQUIRES THAT THE FOREIGN AIR CARRIER PERMITS REISSUED AND ISSUED, RESPECTIVELY, TO BRITISH AIRWAYS BOARD PURSUANT TO ORDER 74-4-17, AND TO BRITISH CALEDONIAN AIRWAYS LIMITED PURSUANT TO ORDER 73-3-33, BE TERMINATED AND CANCELLED, EFFECTIVE UPON THE OCCURRENCE OF THE EVENT SPECIFIED IN CLAUSE (3) OF THE TERMINATION PARAGRAPH OF SAID PERMITS, SUBJECT TO THE PROVISIO THEREOF (TERMINATION OR EXPIRATION OF THE BILATERAL AIR SERVICES AGREEMENT IN THE ABSENCE OF CONTINUATION OF SUCH RIGHTS UNDER A NEW AGREEMENT, OR FOLLOWING SUCH OCCURRENCE, PRESIDENTIAL APPROVAL OF THE APPLICABLE ORDER ISSUED HEREIN, WHICHEVER IS LATER.

"3. THAT IT IS IN THE PUBLIC INTEREST TO ISSUE A FOREIGN AIR CARRIER PERMIT TO BRITISH AIRWAYS BOARD, AUTHORIZING THE CARRIER, FOR A PERIOD OF ONE YEAR, (A) IF, BUT ONLY IF, PRIOR APPROVAL IN THE FORM OF A STATEMENT OF AUTHORIZATION HAS FIRST BEEN ISSUED BY THE BOARD AND APPROVED BY THE PRESIDENT, TO ENGAGE IN FOREIGN AIR TRANSPORTATION WITH RESPECT TO PERSONS, PROPERTY, AND MAIL ON THE ROUTES SPECIFIED IN THE APPLICABLE ATTACHED FORM OF PERMITS, AND (B) TO ENGAGE IN OFF-ROUTE CHARTER TRIPS IN FOREIGN AIR TRANSPORTATION SUBJECT TO THE TERMS, CONDITIONS, AND LIMITATIONS PRESCRIBED BY PART 212 OF THE BOARD'S ECONOMIC REGULATIONS.

"4. THAT THE PUBLIC INTEREST REQUIRES THAT THE EXERCISE OF THE PRIVILEGES GRANTED TO BRITISH AIRWAYS BOARD BY SAID PERMIT SHALL BE SUBJECT TO THE TERMS, CONDITIONS, AND LIMITATIONS CONTAINED IN THE APPLICABLE ACCOMPANYING ORDER

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AND ATTACHED FORM OF PERMIT, AND TO THOSE CONTAINED IN ANY STATEMENT OF AUTHORIZATION TO EXERCISE THE RIGHTS GRANTED IN SAID PERMIT, AND TO SUCH OTHER REASONABLE TERMS, CONDITIONS, AND LIMITATIONS REQUIRED BY THE PUBLIC INTEREST AS MAY FROM TIME TO TIME BE PRESCRIBED BY THE BOARD.

"5. THAT IT IS IN THE PUBLIC INTEREST TO ISSUE A FOREIGN AIR CARRIER PERMIT TO BRITISH CALEDONIAN AIRWAYS LIMITED, AUTHORIZING THE CARRIER, FOR A PERIOD OF FIVE YEARS, TO ENGAGE IN CHARTER FOREIGN AIR TRANSPORTATION AS FOLLOWS: (STANDARD CHARTER PROVISIONS).

"6. THAT THE PUBLIC INTEREST REQUIRES THAT THE EXERCISE OF THE PRIVILEGES GRANTED TO BRITISH CALEDONIAN AIRWAYS LIMITED BY SAID PERMIT SHALL BE SUBJECT TO THE TERMS,

CONDITIONS, AND LIMITATIONS CONTAINED IN THE FORM OF PERMIT ATTACHED TO THE APPLICABLE ACCOMPANYING ORDER, AND TO SUCH OTHER REASONABLE TERMS, CONDITIONS, AND LIMITATIONS AS MAY FROM TIME TO TIME BE PRESCRIBED BY THE BOARD.

"7. THAT BRITISH AIRWAYS BOARD AND BRITISH CALEDONIAN AIRWAYS LIMITED ARE FIT, WILLING AND ABLE PROPERLY TO PERFORM THE ABOVE-DESCRIBED FOREIGN AIR TRANSPORTATION AND TO CONFORM TO THE PROVISIONS OF THE ACT AND THE RULES, REGULATIONS AND REQUIREMENTS OF THE BOARD THEREUNDER.

"8. THAT BOARD ACTION IN THIS PROCEEDING WITH RESPECT TO THE DISPOSITION OF THE SCHEDULED PERMIT AUTHORITY HELD BY AIR BVI LIMITED, CAYMAN AIRWAYS LIMITED, LIAT (1974) LIMITED AND CATHAY PACIFIC AIRWAYS LIMITED, SHOULD BE DEFERRED.

"9. THAT EXCEPT TO THE EXTENT GRANTED OR DEFERRED, ALL REQUESTS IN THIS PROCEEDING SHOULD BE DENIED.

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"APPROPRIATE ORDERS WILL BE ENTERED."

6. ATTACHED TO OPINION ARE THREE ORDERS: FIRST CANCELS PERMITS OF BA AND BCAL AND DEFERS ACTION ON PERMITS OF AIR BVI, CAYMAN, LIAT, AND CATHAY PACIFIC. SECOND GRANTS NEW 402 PERMIT TO BA WITH STATEMENT OF AUTHORIZATION CONDITION. THIRD ORDER GRANTS 402 PERMIT TO BCAL LIMITED TO CHARTER OPERATIONS.

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